

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 DANIEL DEAN SHEETS,
12 Petitioner,
13 v.
14 KATHLEEN ALLISON,
15 Respondent.
16

No. 2:21-CV-0301-JAM-DMC-P

ORDER

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States
19 Magistrate Judge pursuant to Eastern District of California local rules.

20 On December 15, 2021, the Magistrate Judge filed findings and recommendations
21 herein which were served on the parties and which contained notice that the parties may file
22 objections within the time specified therein. Timely objections to the findings and
23 recommendations have been filed.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
25 this Court has conducted a de novo review of this case. Having carefully reviewed the entire file,
26 the Court finds the findings and recommendations to be supported by the record and by proper
27 analysis.

28 ///

Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has considered whether to issue a certificate of appealability. Before Petitioner can appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons set forth in the Magistrate Judge’s findings and recommendations, the Court finds that issuance of a certificate of appealability is not warranted in this case.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 15, 2021, are adopted in full;
2. Respondent’s motion to dismiss, ECF No. 16, is granted;
3. The Court declines to issue a certificate of appealability;
4. Petitioner’s motion for a stay, ECF No. 25, is denied as moot; and
5. The Clerk of the Court is directed to enter judgment and close this file.

DATED: March 16, 2022

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE